
A LEGAL EXPLORATION OF TOURISM IMPACTS ON INDIGENOUS COMMUNITIES IN INDIA

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ABSTRACT

Tourism has emerged as a major contributor to India's economic growth, particularly in ecologically sensitive and culturally significant regions inhabited by indigenous communities. While tourism is widely projected as a catalyst for development and livelihood generation, its rapid expansion has simultaneously produced complex socio-legal challenges. The central research problem addressed in this paper is whether the existing constitutional and statutory framework in India sufficiently safeguards the rights of indigenous communities against the adverse impacts of tourism development, particularly in Scheduled and tribal areas.

The study examines the intersection between tourism projects and issues such as land alienation, displacement, forest access restrictions, cultural commodification, and environmental degradation. It critically analyses the constitutional protections available to Scheduled Tribes under Articles 14, 15(4), 21, 244, and the Fifth and Sixth Schedules of the Constitution of India. The paper further evaluates statutory safeguards under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Panchayats (Extension to Scheduled Areas) Act, 1996, along with environmental regulatory mechanisms operating under the Environment (Protection) Act, 1986 and related clearance procedures.

Adopting a doctrinal method supported by selective case analysis, the paper identifies a persistent gap between formal legal recognition of indigenous rights and their practical realization in the context of tourism-driven development. It highlights structural and administrative tensions between economic policy objectives and the protection of indigenous land, cultural identity, and self-governance. The study situates tourism within the broader constitutional discourse on development, equality, and substantive justice, thereby contributing to ongoing debates on rightsbased governance and indigenous autonomy in India.

Keywords: Indigenous Communities, Scheduled Tribes, Tourism Development, Sustainable Tourism, Land Rights, Forest Rights and Free, Prior and Informed Consent (FPIC)

INTRODUCTION

Tourism in India is a vibrant industry, attracting millions of visitors each year to explore its diverse landscapes, rich cultural heritage, and historical sites. However, amidst the allure of tourist destinations lies a complex reality for indigenous communities. As outsiders flock to experience India's natural beauty and cultural traditions, the indigenous peoples who call these regions home often find themselves grappling with the profound effects of tourism on their lives and livelihoods. This dissertation embarks on a legal exploration of the impact of tourism on indigenous people in India, seeking to unravel the complexities of this dynamic relationship. By examining the intersection of law, tourism, and indigenous rights, we aim to shed light on the challenges faced by indigenous communities in navigating the tourism industry's rapid expansion. From the snowcapped peaks of the Himalayas to the dense forests of the Western Ghats, India's indigenous peoples inhabit diverse ecosystems that are increasingly becoming tourist hotspots. As tourist infrastructure expands and natural resources are exploited to cater to the growing demand, indigenous communities often find themselves marginalized and dispossessed of their ancestral lands. Moreover, the commodification of indigenous culture and traditional knowledge for tourist consumption raises critical questions about cultural appropriation and intellectual property rights. As tourists flock to experience indigenous rituals, crafts, and lifestyles, the economic benefits often fail to trickle down to the communities who are the custodians of these cultural treasures. Against this backdrop, it becomes imperative to examine the legal frameworks governing tourism and indigenous rights in India. From constitutional provisions recognizing the rights of indigenous peoples to international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), a complex web of laws and regulations exists to safeguard indigenous rights. However, the effectiveness of these legal protections in mitigating the adverse impacts of tourism on indigenous communities remains a subject of debate. Despite legal safeguards, indigenous peoples continue to face displacement, environmental degradation, and socio-cultural upheaval in the wake of tourism development. Furthermore, the role of the judiciary in addressing these challenges cannot be overstated. Through landmark judgments and judicial activism, courts have played a crucial role in upholding indigenous rights and holding governments and private entities accountable for their actions.

As we embark on this legal exploration, it is essential to recognize the voices and perspectives of indigenous communities themselves. By centering indigenous experiences and aspirations,

we can strive towards a more equitable and sustainable approach to tourism that respects the rights and dignity of all stakeholders. In sum, this dissertation seeks to delve into the legal dimensions of tourism's impact on indigenous people in India, with the ultimate goal of fostering dialogue, raising awareness, and advocating for policies that promote justice, equity, and respect for indigenous rights in the realm of tourism.

RESEARCH PROBLEM

The study aims to investigate the legal implications of tourism on indigenous communities in India. It seeks to understand how tourism development affects the rights, livelihoods, and cultural heritage of indigenous people, and to identify legal frameworks and mechanisms that can address these impacts effectively.

REVIEW OF LITERATURE

Richard Butler's article, "Research on Tourism, Indigenous Peoples and Economic Development: A Missing Component," published in *Land* in 2021, sheds light on a critical gap in existing literature regarding the intersection of tourism, indigenous peoples, and economic development. Butler argues that while extensive research has been conducted on various aspects of tourism and its impacts, there remains a notable absence of comprehensive studies addressing the specific dynamics between tourism, indigenous communities, and economic development. By identifying this gap, Butler underscores the importance of recognizing indigenous perspectives and agency in tourism development initiatives, highlighting the need for more inclusive and participatory approaches to research and policymaking in this field.

Chang, K.G, The research explores the perceptions of local residents regarding the impacts of tourism development in rural indigenous destinations. The study utilizes choice modeling as a methodological approach to understand how residents perceive and prioritize various aspects of tourism development. Through empirical analysis, the authors aim to shed light on the socioeconomic, cultural, and environmental implications of tourism on indigenous communities.

The article by Brooks et al. (2023) provides a systematic review that investigates the intricate relationships between heritage tourism, sustainable community development, and the health and wellbeing of host communities. By examining a wide range of literature, the authors aim

to uncover the impacts of heritage tourism on various dimensions of community life. They delve into how tourism activities centered around cultural heritage sites can potentially contribute to sustainable development initiatives, economic growth, and social cohesion within host communities. Furthermore, the study scrutinizes the potential health and wellbeing outcomes for local residents, considering both positive and negative effects such as changes in lifestyle, access to healthcare, and socio-economic disparities.

The article “Indian Indigenous Tribes Exploited in Name of Tourism” published by Travindy sheds light on the pervasive issue of exploitation faced by indigenous tribes in India within the tourism industry. Drawing attention to the often-overlooked plight of these communities, the article underscores how tourism, touted as a means of economic development, frequently exacerbates existing inequalities and undermines the rights of indigenous peoples. Through anecdotal evidence and expert analysis, the article elucidates

AIMS AND OBJECTIVES OF THE STUDY

The aim of this study is to examine how tourism affects indigenous communities in India from a legal perspective. We seek to understand the various ways in which tourism influences the lives of indigenous people, including their rights, culture, and livelihoods. By exploring the legal frameworks governing tourism and indigenous rights, both nationally and internationally, we aim to shed light on the challenges and opportunities faced by indigenous communities in the context of tourism development. Through this exploration, we hope to contribute to a better understanding of how to protect the rights and interests of indigenous people in the face of increasing tourism activities in India.

RESEARCH QUESTIONS

1. How do legal frameworks in India address the impact of tourism on indigenous communities?
2. What are the specific rights and protections afforded to indigenous peoples in the context of tourism development?
3. How do national and international laws intersect to govern the relationship between tourism and indigenous rights in India

HYPOTHESIS FORMULATED

The surge in tourism may lead to cultural erosion among indigenous populations in India, challenging the preservation of traditional knowledge, practices, languages, and heritage.

RESEARCH METHODOLOGY

The present study is to understand the exploration of the legal dimensions of tourism's impact on indigenous communities in India unveils a complex interplay between economic development, cultural preservation, environmental impacts and human rights perspective. The nature of the research done is Doctrinal in nature. This study has made usage of both primary and secondary sources available on the topic. In this research the primary sources consist of the international conventions, the national legislations and reports by the international and national organizations and instruments and further the secondary sources consist of articles, journals, and other mass media related sources.

LIMITATION OF THE STUDY

All research and studies have limits; therefore, each study just paves the way for further research or study space. Similar to the researcher, there were certain restrictions during this study's period.

- The primary limitation of this study is the reliance on doctrinal research methodology. While this approach is effective in analyzing existing legal frameworks and case law, it may not capture the full spectrum of lived experiences and perspectives of indigenous communities impacted by tourism in India.
- Another limitation is the scarcity of empirical data specifically focused on the legal dimensions of tourism's impact on indigenous peoples in India.
- The study focuses specifically on the context of India.

IMPACTS OF TOURISM ON INDIGENOUS COMMUNITIES

India, a land of diverse cultures, traditions, and landscapes, is home to a rich tapestry of indigenous communities. These communities, with their unique customs, art forms, and lifestyles, contribute significantly to the country's cultural mosaic. In recent years, there has

been a growing interest in indigenous tourism in India, providing travelers with an opportunity to explore and engage with the authentic heritage of these communities. This form of tourism not only offers a glimpse into the vibrant indigenous way of life but also serves as a means of preserving and promoting their rich cultural heritage. Indigenous tourism in India is not a recent phenomenon; it has roots deeply embedded in the history and ethos of the nation. Many tribal communities have been living in harmony with nature for centuries, practicing sustainable lifestyles that are now gaining recognition and appreciation. The allure of indigenous tourism lies in its ability to showcase these sustainable practices, traditional knowledge, and the symbiotic relationship that indigenous communities maintain with their environment¹.

One of the key aspects of indigenous tourism is the opportunity it provides for travelers to step beyond the usual tourist circuits and delve into the heart of rural India. These communities, often residing in remote areas, offer an escape from the hustle and bustle of urban life, providing a serene and authentic experience for those seeking a deeper connection with the land. As tourists immerse themselves in the indigenous way of life, they are met with warmth, hospitality, and a chance to witness traditions that have been passed down through generations. India's northeastern states, such as Assam, Arunachal Pradesh, and Nagaland, are among the regions where indigenous tourism is gaining momentum². The diverse tribes that inhabit these areas have unique cultural practices, languages, and art forms that add to the rich tapestry of the country. Travelers to these regions can partake in traditional festivals, witness intricate handloom and handicraft processes, and savor local cuisines that reflect the region's biodiversity. One striking feature of indigenous tourism in India is its focus on sustainable and responsible travel³. Many indigenous communities are keenly aware of the environmental challenges and are striving to preserve their natural surroundings. Travel experiences often include eco-friendly initiatives, such as guided nature walks, wildlife conservation programs, and a chance to witness traditional farming methods that prioritize the health of the land. Indigenous tourism also plays a pivotal role in promoting economic empowerment within these communities. By engaging in tourism activities, indigenous people can showcase their unique skills, craftsmanship, and products, providing them with a source of income. This economic empowerment has a ripple effect on the overall development of these communities, enabling

¹ Kyle Powys Whyte, "An environmental justice framework for indigenous tourism," *Environmental Philosophy* 7, no. 2 (2010): 75-92.

² Sarita Dash, "Look-Act East Policy and the Northeast Region" (2023), doi: 10.1007/978-981-19-3529-9_8.

³ Emil Uddhammar, "Development, Conservation and Tourism: Conflict or Symbiosis?" *Review of International Political Economy* 13, no. 4 (2006): 656-78.

them to invest in education, healthcare, and infrastructure. However, the delicate balance between economic development and cultural preservation must be maintained. Indigenous tourism should be approached with sensitivity, ensuring that the communities' rights and traditions are respected. Responsible tourism practices include obtaining informed consent from the communities involved, fairly compensating them for their services, and implementing measures to protect their cultural heritage⁴⁵. In addition to the northeastern states, indigenous tourism is gaining traction in other parts of the country as well. States like Rajasthan, Gujarat, and Odisha have been successful in showcasing the vibrant cultures of their indigenous communities⁶.

The tribal villages of Rajasthan, with their colorful attire, traditional dances, and age-old rituals, provide an enchanting experience for those seeking an authentic encounter with Indian heritage. One of the notable initiatives supporting indigenous tourism in India is the promotion of community-based homestays. These homestays allow travelers to live with indigenous families, sharing their daily lives and experiencing their customs firsthand. The intimate setting fosters cultural exchange, breaking down stereotypes and fostering mutual understanding between visitors and hosts. The income generated from these homestays directly benefits the community, providing them with a sustainable source of livelihood⁷. Art and craft form an integral part of indigenous tourism, with many communities showcasing their skills through traditional handloom, pottery, and weaving. For instance, the Kutch region in Gujarat is renowned for its vibrant handicrafts, including intricate embroidery and mirror work. Travelers can visit these communities, witness the artistic process, and even participate in workshops to learn these age-old crafts⁸. This not only supports the local economy but also ensures the preservation of these traditional art forms.

VARIOUS INCIDENTS OF IMPACT OF TOURISM ON TRADITIONAL PRACTICES AND CUSTOMS OF INDIGENOUS COMMUNITIES

India is home to a myriad of indigenous communities, each with its own set of traditional

⁴ Kokkranikal, J., & Chettiparamb, A. "Responsible Tourism and Sustainability – the Case of Kumarakom, Kerala, India" (2012) *Journal of Policy Research in Tourism Leisure and Events*, 4, 302-326 [DOI: 1080/19407963.2012.711088].

⁵ 1080/19407963.2012.711088].

⁶ <https://nangia-andersen.com/core/uploads/2021/09/FICCI-Booklet.pdf>

⁷ Anupam Anand et al., "Homestays at Korzok: Supplementing Rural Livelihoods and Supporting Green Tourism in the Indian Himalayas," *Mountain Research and Development* 32, no. 2 (2012): 126–136.

⁸ <https://travel.bhushavali.com/2020/07/crafts-of-kutch-gujarat.html>

practices and customs that are deeply rooted in their cultural heritage. The below are the few traditional practices and customs observed by various indigenous communities in different regions of India:

Dongria Kondh Tribe - Odisha: The Dongria Kondh, residing in the Niyamgiri Hills of Odisha, have a distinct agricultural practice known as "Podu cultivation"⁹ or shifting cultivation¹⁰. They clear small patches of land in the dense forests, cultivate crops, and move to a different area once the soil fertility diminishes. This sustainable practice ensures minimal impact on the environment. Coastal tourism development in places like Puri has led to the displacement of indigenous fishing communities, resulting in the loss of traditional fishing techniques and knowledge passed down through generations¹¹.

Andaman and Nicobar Islands: Tourism growth in areas like Havelock Island has disrupted the traditional way of life of indigenous tribes like the Jarawa and Sentinalese, leading to a loss of their cultural heritage and intimate knowledge of the local ecosystem¹².

Todas - Nilgiri Hills, Tamil Nadu: The Todas, an indigenous community in the Nilgiri Hills, have a unique practice of building traditional huts called "munds." These cylindrical structures, made of bamboo and thatch, are essential for their pastoral lifestyle¹³. But There is a prime concern for depletion in the natural resources and disruption in lives of the tribal communities due to unrestrained tourism, unsustainable and unplanned infrastructure development, and insufficient water resource management are just a few of the severe concerns facing the region¹⁴.

Goan Tribe – Goa: The influx of tourism has led to the commercialization of indigenous Goan culture, with traditional practices being marginalized in favor of catering to tourists'

⁹ Podu is an age-old farming practice employed by indigenous tribes in India, where they annually clear patches of forest by burning, creating space for cultivating crops. This method, originating from the Telugu language, involves a form of shifting agriculture utilizing slash-and-burn techniques.

¹⁰ https://repository.tribal.gov.in/bitstream/123456789/74426/1/SCST_2015_research_0339.pdf

¹¹ Nalini Nayak, "Fighting displacement of Fishing Communities in Orissa, India"

¹² Mousime, Xalxo, "The Invisible Tribal Tourism in Andaman & Nicobar Islands," in Perspectives on Business Management & Economics, vol. II, pp. 15-23 (September 2020), available at <http://www.pbme.in/papers/24.pdf>.

¹³ Govindharaj & Yoganandham, "Primitive Kota Tribes of Nilgiris Focusing on Traditional, Social, and Economic Factors - An Ethnographic Assessment" (2023) 12 ILI 162-177.

¹⁴ Hemasrikumar, Dr., and Indumathy. "Depletion of Natural Resources and its Impact on Tribals in the Nilgiris District." IJCRT, vol. 10, no. 10, October 2022, pp. [page range], ISSN: 2320-2882.

expectations. This includes the erosion of traditional fishing practices and the loss of cultural authenticity in dance and music forms¹⁵.

Sikkim: The promotion of tourism in areas like Gangtok and Lachung has led to the commodification of indigenous culture and traditions, with local communities increasingly marginalized and their traditional knowledge on medicinal plants and biodiversity conservation undervalued¹⁶.

Kerala: The backwater tourism in Kerala has impacted indigenous fishing communities like the Vembanad Lake Fisherfolk. Their traditional fishing practices and knowledge of the ecosystem are being undermined by pollution, habitat degradation, and competition from large-scale tourism operations¹⁷.

Assam: The Kaziranga National Park in Assam attracts a large number of tourists every year, leading to conflicts with indigenous communities like the Mishing and Karbi tribes who reside in the vicinity. Their traditional knowledge of forest management and conservation is threatened by the conservation policies and tourism development initiatives¹⁸.

Madhya Pradesh: The Kanha and Bandhavgarh National Parks in Madhya Pradesh attract a large number of tourists for wildlife safaris, impacting indigenous communities like the Baiga and Gond tribes who have historically inhabited these forests. Their traditional knowledge of biodiversity conservation and sustainable hunting practices is threatened by the conservation efforts and tourism activities in the region¹⁹.

Himachal Pradesh: In regions like Kullu-Manali and Dharamshala, the growth of tourism has disrupted the traditional livelihoods of indigenous communities such as the Gaddis and Gujjars.

¹⁵ Natasha Brammer & John Beech, "Use and Abuse of Tourism: The Goan Experience," *Tourism Culture & Communication* 5 (2004): 23-35, <https://doi.org/10.3727/1098304042781508>.

¹⁶ R. Joshi and P. P. Dhyani, "Environmental Sustainability and Tourism – Implications of Trend Synergies of Tourism in Sikkim Himalaya," *Current Science*, vol. 97, no. 1, pp. 33–41 (2009), available at <http://www.jstor.org/stable/24112080>.

¹⁷ Jose, Jiju, & Aithal, Sreeramana. "A Study on Significance of Backwater Tourism and Safe Houseboat Operation in Kerala." *International Journal of Management, Technology, and Social Sciences* (2020): 133-140. DOI: 10.47992/IJMTS.2581.6012.0109.

¹⁸ Syed Ainul Hussain et al., "An Analysis of Livelihood Linkages of Tourism in Kaziranga National Park, a Natural World Heritage Site in India," *PARKS* 18.2 (2012), <https://parksjournal.com/wpcontent/uploads/2012/12/PARKS18.2-Hussain-et-al.pdf>.

¹⁹ Gohil, Neeraj. "Potential and Planning for Tribal Tourism in India: A Case Study on Gond Tribes of Madhya Pradesh State, India." *SCHOLEDGE International Journal Of Multidisciplinary & Allied Studies* ISSN 2394336X, vol. 06, issue 8 (2019): 72-81.

Their knowledge of pastoralism and sustainable land use practices is under threat due to rapid urbanization and commercialization driven by tourism²⁰.

Naga Tribes - Nagaland: The Naga tribes in Nagaland have distinct customs related to their warrior traditions. Headhunting, once a significant practice among certain Naga tribes, is now replaced by various other traditional ceremonies and festivals, such as the Hornbill Festival, which showcases their diverse cultural heritage²¹.

Warli Tribe - Maharashtra: The Warli tribe, residing in the Western Ghats of Maharashtra, is known for its unique style of wall painting, known as Warli art. This traditional practice involves geometric shapes and simple lines to depict scenes of daily life, rituals, and folklore. The Warlis also have unique customs related to their agricultural and social practices²². But the ecotourism initiatives in Maharashtra's tribal regions like Melghat and Tadoba have raised concerns about the commodification of indigenous culture and displacement of tribal communities they left their ancestral lands to make way for tiger conservation²³.

Siddi Community²⁴ - Gujarat and Karnataka: The Siddi community, with African roots, practices various traditional customs, including their unique dance forms, music, and rituals. They have maintained their distinct cultural identity while also integrating aspects of the local Indian culture.

These examples highlight the impacts and the diversity of traditional practices and customs observed by indigenous communities in India. Each community's customs are deeply rooted in their historical and cultural contexts, contributing to the rich and varied tapestry of India's.

INDIGENOUS TRIBES IN INDIA ARE EXPLOITED IN THE NAME OF TOURISM

In February of this year, the Odisha government made the decision to permit foreign visitors once again to areas inhabited by tribal communities, marking the end of a three-year restriction. This move comes after a series of events prompted the state to impose a ban on foreign tourists'

²⁰ Kumar, R. "Rural tourism in Himachal Pradesh: Impact on local economy, culture, and ecology" (2018) 6(1) International Journal of Creative Research Thoughts (IJCRT) March 2018, ISSN: 2320-2882.

²¹ <https://www.oddessemania.in/culture-of-nagaland/>

²² Dr. Kavita Patil, "Warli art: Diversification of traditional painting creating future, hope & happiness," International Journal of Home Science (2017) 3(3): 451-456, ISSN: 2395-7476.

²³ <https://india.mongabay.com/2023/03/madia-gond-tribes-forced-to-leave-ancestral-land-as-human-animalconflictincreases/>

²⁴ <https://minorityrights.org/communities/siddi/>

access to tribal regions back in 2012. The decision was catalyzed by the exploitation of tribal imagery on tourism platforms, which depicted scantily dressed members of the Bonda and Dongaria tribes, aiming to attract visitors. Additionally, the abduction of two Italian tourists by Maoist insurgents in the same year further fueled concerns regarding tourist safety and tribal welfare. As a precautionary measure, the government enforced strict regulations, prohibiting tourists from getting too close to tribal members or entering their dwellings. Collectors were instructed to prevent any form of entertainment provided by tribals to tourists, and the capturing of photographs or videos of tribal individuals was strictly forbidden.

Over the last ten years, tourism in India has undergone a significant transformation, with tribal tours emerging as a highly sought-after experience for both domestic and international visitors. According to a survey conducted by the Ministry of Tribal Affairs in 2013, indigenous tribes make up 8.6 percent of India's total population²⁵. India's tourism sector has witnessed remarkable growth, contributing significantly to the nation's economy. On average, tourism contributes around 6.7 percent to the country's GDP. In 2012 alone, the tourism industry in India generated an impressive 6.4 trillion rupees, as reported by the World Travel and Tourism Council.

According to journalist and travel writer Terry Ward, 'tribal tourism' refers to a modern form of travel where tourists visit tribal villages to immerse themselves in cultures vastly different from their own²⁶. In India, states like Madhya Pradesh, Jharkhand, Orissa, Nagaland, Himachal Pradesh, and Chhattisgarh attract a significant amount of tribal tourism. This type of tourism has opened up economic opportunities for indigenous tribes residing in remote areas and has also helped raise awareness about their plight, including oppression, limited opportunities, and social marginalization.

However, despite its apparent benefits, tribal tourism can have negative social and psychological repercussions for indigenous communities. In recent years, numerous tourism companies have emerged, offering tours to tribal regions. Unfortunately, many of these 'tribal tours' operate solely for profit without considering the cultural sensitivity and ethical implications of their activities. Some agencies, as highlighted by The Guardian²⁷, are even

²⁵ <https://tribal.nic.in/WriteReadData/userfiles/file/Statistics/StatisticalProfileofSTs2013.pdf>

²⁶ <https://www.thescholedge.org/index.php/sijmas/article/download/602/544#:~:text=%E2%80%9ETribal%20to%20urism%E2%80%9F%20as%20defined%20by,on%20remote%20and%20rural%20area%2C>

²⁷ <https://www.theguardian.com/world/2012/feb/26/human-safari-threat-amazon-tribe>

willing to facilitate forced contact with isolated indigenous tribes if customers pay enough money.

Instances from history illustrate the profound impact of tribal interactions with tourists. For example, in the Andaman and Nicobar Islands, the construction of the Grand Andaman Trunk Road led to encounters between tourists and the Jarawa tribe²⁸. Reports revealed instances where tourists offered money, threw items at Jarawa individuals, and even provided cigarettes to children, leading to addiction issues and cultural degradation. Research studies have documented various negative consequences of irresponsible tourist activities in tribal areas, including culture shock, exploitation, objectification, humiliation, and inter-tribe conflicts²⁹. The key question arises: how can tribal tourism be made ethical to protect indigenous tribes from exploitation?

The concept of 'responsible tourism,' guided by ethical principles and cultural sensitivity, is crucial. Tourists need to be educated about the potential negative impacts of tribal tourism on indigenous communities. Travelers engaging in such tourism should be sensitized to the cultures they encounter³⁰. Governments should establish clear regulations governing tribal tourism activities, specifying the roles of travel agencies and the extent of their involvement. Additionally, all tourism activities in indigenous and protected areas should undergo rigorous monitoring and approval by professionals to assess potential risks³¹.

The Hornbill Festival in Nagaland serves as a positive model of tribal tourism. This government led initiative celebrates Nagaland's cultural heritage while ensuring respect for traditions and ethical practices³². Similar efforts are emerging in other parts of India, such as the Daman and Diu festival, and tribal tourism initiatives in Maharashtra and Odisha, which are gradually embracing responsible tourism practices³³. Thoughtfully managed tribal tourism has the potential to promote social and economic inclusion for indigenous communities while

²⁸ <https://www.aljazeera.com/features/2014/1/4/time-ticking-for-indias-jarawa-tribe>

²⁹ <https://www.theguardian.com/world/2012/jan/07/andaman-islands-tribe-tourism-threat>

³⁰ Recommendations on Sustainable Development of Indigenous Tourism, Adopted by the Resolution A/RES/723(XXIII) of the General Assembly of UNWTO," available at: <https://www.e->

³¹ IUCN, Tourism and visitor management in protected areas, guidelines for sustainability, Best Practice Protected Area Guidelines Series No. 27, (IUCN, n.d.), <https://portals.iucn.org/library/sites/library/files/documents/PAG-027-En.pdf>.

³² <https://www.thehindu.com/life-and-style/hornbill-festival-2023-a-peek-into-nagalandscolourfultraditions/article67556921.ece>

³³ <https://timesofindia.indiatimes.com/travel/destinations/places-in-india-that-inspire-travellers-to-adoptresponsibletourism/articleshow/106780271.cms>

fostering a sense of national belonging and dignity.

LEGAL FRAMEWORKS GOVERNING TOURISM AND INDIGENOUS RIGHTS IN INDIA

INTRODUCTION

Tourism has emerged as a powerful economic force reshaping landscapes and communities worldwide. However, this growth often encroaches upon the lands and cultures of indigenous communities, leading to conflicts over land rights, cultural appropriation³⁴, and environmental degradation. In response, legal frameworks have been developed at both international and national levels to protect the rights and interests of indigenous peoples in the context of tourism.

At the international level, several key legal instruments play a crucial role in safeguarding the rights of indigenous communities in the face of tourism development. Foremost among these is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)³⁵, adopted by the UN General Assembly in 2007. UNDRIP recognizes indigenous peoples' right to self-determination, land ownership, cultural integrity, and participation in decision-making processes concerning their lands and resources. Additionally, the International Labour Organization (ILO) Convention 169 sets forth specific provisions for the protection of indigenous and tribal peoples' rights, including their rights to consultation and FPIC³⁶ regarding development projects affecting their territories. These international legal frameworks provide a foundation for promoting the rights of indigenous communities in the context of tourism. They emphasize the importance of respecting indigenous peoples' land rights, cultural heritage, and traditional knowledge³⁷, while also acknowledging their right to benefit equitably from tourism development initiatives.

INTERNATIONAL LEGAL FRAMEWORKS FOR THE RIGHT TO PROTECTION OF INDIGENOUS COMMUNITIES AND TOURISM

³⁴ It takes place when members of a majority group adopt cultural elements of a minority group in an exploitative, disrespectful, or stereotypical way

³⁵ United Nations (General Assembly), Declaration on the Rights of Indigenous Peoples (2007).

³⁶ Free, Prior and Informed Consent.

³⁷ Traditional knowledge (TK) is knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

United Nations World Tourism Organization³⁸ (UNWTO):

The United Nations World Tourism Organization (UNWTO) is a specialized agency of the United Nations responsible for promoting sustainable and responsible tourism worldwide³⁹. While the UNWTO does not have a specific convention dedicated solely to the protection of indigenous communities, it does have various initiatives and provisions aimed at regulating tourism and addressing the impacts on indigenous communities. These initiatives are primarily found in the Global Code of Ethics for Tourism and other relevant documents. Let's explore some important provisions along with their interpretation in relation to indigenous rights and the impacts of tourism:

Global Code of Ethics for Tourism⁴⁰:

This code, adopted by the UNWTO, sets out guidelines for responsible and sustainable tourism practices, including the protection of natural and cultural heritage and respect for local communities.

Tourism Development and Indigenous Communities⁴¹: This article emphasizes the importance of respecting the cultural diversity and heritage of indigenous communities in tourism development. It calls for tourism development that promotes the preservation of indigenous cultures and traditions, ensuring their active participation and benefit-sharing.

Tourism Planning and Sustainable Development⁴²: This article highlights the need for tourism development that respects the rights and interests of local communities, including indigenous peoples. It stresses the importance of sustainable tourism planning that considers the sociocultural, economic, and environmental impacts on indigenous communities.

Tourism's Contribution to Mutual Understanding and Respect⁴³: This article emphasizes the role of tourism in fostering mutual understanding and respect among different cultures, including indigenous cultures. It encourages tourism activities that promote crosscultural

³⁸ World Tourism Organization, UNWTO Basic Documents, Volume I – Statutes, Rules of Procedure, Agreements, 5th ed., (UNWTO 2016).

³⁹ <https://www.un.org/regularprocess/content/united-nations-world-tourism-organization-unwto>

⁴⁰ GLOBAL CODE OF ETHICS FOR TOURISM, <https://www.unwto.org/global-code-of-ethics-for-tourism>

⁴¹ Article 4(1) of Global Code of Ethics for Tourism

⁴² Article 3 of Global Code of Ethics for Tourism

⁴³ Article 1 of Global Code of Ethics for Tourism

exchange while safeguarding the integrity and dignity of indigenous communities.

Tourism and the Environment⁴⁴: This article underscores the importance of protecting natural resources and biodiversity, which are often vital to the livelihoods of indigenous communities. It advocates for responsible tourism practices that minimize environmental degradation and respect indigenous land rights and conservation efforts.

The World Tourism Organisation and the Organisation for Economic Cooperation and Development, they are primarily responsible for shaping the worldwide policy and planning framework within which the international tourism sector operates ⁴⁵ . The organisations mentioned above also contribute to the promotion of tourism in specific nations around the globe.

In order to foster collaboration among governments, regional bodies, and non-governmental organizations towards the objectives outlined in Agenda 21, which emphasize both development and environmental conservation, the United Nations designated 2002 as the International Year of Ecotourism. This initiative aims to integrate the principles of sustainable development into ecotourism, encouraging efforts to alleviate poverty while safeguarding the environment⁴⁶.

- Recognizing ecotourism as crucial for achieving sustainable development, ecological preservation, and poverty alleviation.
- Emphasizing the importance of incorporating and promoting indigenous traditions, customs, and knowledge when formulating ecotourism regulations.
- Highlighting the significant opportunities that ecotourism offers for conserving and responsibly utilizing biodiversity and natural resources, while fostering appreciation for ecological and cultural heritage among both local communities and visitors.

⁴⁴ Article 3(4) of Global Code of Ethics for Tourism

⁴⁵ Shone, M.C., & Memon, P.A. (2008). Tourism, public policy and regional development: A turn from neoliberalism to the new regionalism. *Local Economy*, 23(4), 290-304.

⁴⁶ Agenda 21 and Sustainable Tourism, in World Summit on Sustainable Development, Johannesburg, 2002, Chapter IV, para. 43 of Johannesburg Plan of Implementation, available at https://www.gdrc.org/uem/ecotour/agenda21_chapt4_para43.html.

- Underlining the need for national tourism policies to consider market demand and regional competitive advantages.
- Urging Member States to support ecotourism investment within the framework of domestic laws, including through the promotion of cooperatives and small and medium-sized enterprises, as well as facilitating access to financial services such as micro-credit programs for marginalized communities, indigenous populations, and remote areas with potential for sustainable tourism development.

During the sixty-ninth session of the UN General Assembly, a supplementary assessment report on ecotourism was presented by UNWTO in 2014⁴⁷.

The International Union for Conservation of Nature (IUCN)⁴⁸:

The IUCN is a leading organization working on conservation and sustainable development. It collaborates with the tourism industry to integrate conservation principles into tourism practices.

The United Nations Declaration on the Rights of Indigenous Peoples⁴⁹ (UNDRIP)

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) contains several important provisions and articles aimed at protecting the rights of indigenous communities. When interpreted in the context of tourism, these provisions highlight the need for sustainable tourism practices that respect indigenous rights and minimize negative impacts on their communities. Below are some key provisions of UNDRIP along with their interpretation concerning tourism and its impacts on indigenous communities:

Right to Self-Determination: Indigenous peoples have the right to freely determine their political status and pursue their economic, social, and cultural development⁵⁰. Indigenous communities should have the autonomy to make decisions about tourism development on their lands, including whether to engage in tourism activities and how to benefit from them

⁴⁷ General Assembly, "Agenda (Session 69, 2014).

⁴⁸ <https://www.iucn.org/our-work/region/mediterranean/our-work/ecosystem-resilience-and-spatial-planning/sustainable-tourism>

⁴⁹ United Nations (General Assembly), Declaration on the Rights of Indigenous Peoples (2007).

⁵⁰ Article 3 of UNDRIP

economically and culturally.

Right to Culture⁵¹ : Indigenous peoples shall not be forcibly assimilated or deprived of their culture. Tourism activities should not exploit or misrepresent indigenous cultures for commercial gain. Instead, they should respect and promote indigenous cultural practices, traditions, and knowledge systems in an authentic and respectful manner.

Right to Practice and Revitalize Cultural Traditions: Indigenous peoples have the right to practice and revitalize their cultural traditions and customs⁵². Tourism should support efforts by indigenous communities to preserve and promote their cultural heritage, including through cultural tourism initiatives that are controlled and managed by indigenous peoples themselves.

Right to Lands, Territories, and Resources: Indigenous peoples have the right to own, use, develop, and control their lands, territories, and resources⁵³. Tourism development should not result in the displacement or dispossession of indigenous communities from their traditional lands. Indigenous land rights should be respected, and communities should be consulted and involved in decision-making processes related to tourism development on their lands.

Conservation and Protection of the Environment⁵⁴ : States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior, and informed consent. Tourism activities should adhere to strict environmental standards to minimize their ecological footprint and prevent harm to indigenous lands, waters, and resources. Indigenous communities should have the right to participate in environmental impact assessments and decision-making processes related to tourism development projects.

Free, Prior, and Informed Consent (FPIC): States shall consult and cooperate in good faith with indigenous peoples through their own representative institutions to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them⁵⁵. Indigenous communities should have the right to give or withhold their consent to tourism projects proposed on their lands. This includes the right to be fully informed

⁵¹ Article 1 of UNDRIP

⁵² Article 11 of UNDRIP

⁵³ Article 26 of UNDRIP

⁵⁴ Article 29 of UNDRIP

⁵⁵ Article 32(2) of UNDRIP

about the potential impacts of such projects and to participate in decisionmaking processes on an equal basis.

Albeit, the provisions of UNDRIP emphasize the importance of respecting indigenous rights, culture, and self-determination in the context of tourism development. Effective implementation of these provisions requires meaningful consultation and engagement with indigenous communities, as well as adherence to principles of sustainability, equity, and respect for cultural diversity.

International Labour Organization (ILO) Convention 169^{56 57}:

International Labour Organization (ILO) Convention 169 is a landmark international instrument that specifically addresses the rights of indigenous and tribal peoples. Adopted in 1989, it sets out a comprehensive framework for the protection and promotion of the rights of indigenous communities, including their rights to land, culture, and self-determination. Several provisions and articles within ILO Convention 169 are particularly relevant to the impact of tourism on indigenous communities:

Consultation and Participation: This article emphasizes the importance of consulting indigenous peoples through appropriate procedures and in particular through their representative institutions before adopting legislative or administrative measures that may affect them directly⁵⁸. In the context of tourism development, governments and other relevant authorities are required to consult with indigenous communities before implementing tourism projects on their traditional lands.

Right to Ownership⁵⁹: the convention recognizes the right of indigenous peoples to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation. This provision is crucial in the context of tourism development, as it establishes the principle that indigenous communities have the right to control and benefit from tourism activities occurring on their ancestral lands.

Participation in Decision-Making: It enshrines the right of indigenous peoples to participate

⁵⁶ International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, C169, 27 June

⁵⁷ Available at <https://www.refworld.org/legal/agreements/ilo/1989/en/19728>.

⁵⁸ Article 6 of ILO Convention 169

⁵⁹ Article 14 of ILO Convention 169

in decision-making processes that may affect their rights and interests⁶⁰. In the context of tourism, this provision empowers indigenous communities to have a say in the planning, implementation, and management of tourism projects taking place within their territories.

Right to Cultural Integrity: It protects the cultural integrity of indigenous peoples, including their social, religious, spiritual, and cultural values and practices⁶¹. Tourism activities often have significant cultural impacts on indigenous communities, and this provision ensures that their cultural heritage and identity are respected and preserved in the face of tourism-related developments.

Right to Development: This article recognizes the right of indigenous peoples to determine their own priorities for development and to pursue their economic, social, and cultural development⁶². In the context of tourism, indigenous communities should have the opportunity to decide whether and how tourism can contribute to their development goals, rather than being subjected to externally imposed development agendas.

Social, Cultural, and Economic Rights: This provision highlights the importance of safeguarding the social, cultural, religious, and spiritual values and practices of indigenous peoples⁶³. It calls for measures to promote their economic and social development while respecting their cultural integrity.

CRITIQUES OF ILO CONVENTION 169 AND INDIA'S NON-RATIFICATION:

Despite its significance, ILO Convention 169 has faced criticism and challenges, particularly regarding its implementation and enforcement:

Limited Binding Nature: ILO Convention 169 is a legally binding instrument, but its implementation relies heavily on voluntary compliance by member states. Lack of enforcement mechanisms weakens its effectiveness in protecting indigenous rights.

Conflict with National Laws: Some governments, including India, have hesitated to ratify the convention due to concerns about its compatibility with national laws and policies, particularly

⁶⁰ Article 2 of ILO Convention 169

⁶¹ Article 2(2)(b) of ILO Convention 169

⁶² Article 2(2) of ILO Convention 169

⁶³ Article 30 of ILO Convention 169

regarding land ownership, resource extraction, and development projects.

Resistance from Industry Interests: Powerful economic interests, including the tourism industry, often resist the implementation of ILO Convention 169 due to concerns about potential restrictions on investment, land use, and profit-making activities in indigenous areas.

India, despite being home to a significant population of indigenous peoples, has not ratified ILO Convention 169. One of the primary reasons for India's non-ratification is the perceived conflict between the convention's provisions and certain domestic laws and policies, especially those related to land acquisition, resource extraction, and infrastructure development. Additionally, there may be concerns about the potential impact of ratification on India's sovereignty and governance structures. However, the non-ratification of ILO Convention 169 underscores the need for India to review and reform its laws and policies to better protect the rights and interests of indigenous communities, particularly in the context of tourism development. The interpretation of these provisions within the context of tourism highlights the importance of ensuring that tourism projects respect the rights, interests, and cultural integrity of indigenous communities. Governments, tourism operators, and other stakeholders involved in tourism development must engage in meaningful consultation and collaboration with indigenous peoples, uphold their land rights, involve them in decisionmaking processes, and respect their cultural heritage. Failure to do so may result in negative social, cultural, and environmental impacts on indigenous communities, undermining their rights and well-being. Therefore, the principles outlined in ILO Convention 169 serve as essential guidelines for promoting responsible and sustainable tourism practices that benefit both indigenous communities and the broader society.

Convention on Biological Diversity⁶⁴ (CBD):

The Convention on Biological Diversity (CBD) is a significant international treaty aimed at conserving biodiversity, promoting sustainable use of biological resources, and ensuring equitable sharing of benefits arising from the utilization of genetic resources. While the CBD does not explicitly focus on indigenous rights, several provisions within the convention indirectly contribute to the protection of indigenous communities and their traditional

⁶⁴ The Convention on Biological Diversity of 5 June 1992 (1760 U.N.T.S. 69);

knowledge. These provisions intersect with tourism activities, often impacting indigenous communities both positively and negatively.

The CBD addresses access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from their utilization⁶⁵. While not directly related to tourism, it indirectly impacts indigenous communities involved in eco-tourism or other forms of sustainable tourism where biodiversity and traditional knowledge play a significant role. Ensuring that indigenous communities receive a fair share of benefits from tourism activities involving genetic resources is crucial for promoting equity and supporting community-based conservation efforts.

UNESCO World Heritage Convention⁶⁶:

The UNESCO World Heritage Convention, adopted in 1972, aims to protect cultural and natural heritage of outstanding universal value. While the convention does not explicitly address the rights of indigenous communities, several provisions and articles indirectly impact indigenous rights, particularly in the context of tourism. Here are the important provisions and their interpretation along with the impacts of tourism on indigenous communities:

Identification, Protection, Conservation, Presentation and Transmission of Cultural and Natural Heritage: This article emphasizes the duty of States Parties to protect and conserve heritage sites⁶⁷. It implies a responsibility to safeguard the cultural and natural heritage of indigenous communities, which often overlap with designated heritage sites. Indigenous communities often inhabit areas with significant cultural and natural heritage. Tourism activities around these sites can disrupt their traditional way of life, access to resources, and cultural practices.

National Committees and Focal Points: Calls for the establishment of national committees or similar institutions for the implementation of the Convention at the national level⁶⁸. Indigenous representation within these national committees can ensure their voices are heard in decisionmaking processes related to heritage site management and tourism development.

⁶⁵ Article 7 of CBD

⁶⁶ UN Educational, Scientific and Cultural Organisation (UNESCO), 16 November 1972.

⁶⁷ Article 4 of UNESCO

⁶⁸ Article 11 of UNESCO

NATIONAL LEGAL FRAMEWORKS FOR THE RIGHT TO PROTECTION OF INDIGENOUS COMMUNITIES AND TOURISM

India is celebrated for its rich diversity encompassing both living organisms and inanimate elements. The population of India is characterized by divisions based on political affiliations, religious beliefs, racial backgrounds, economic statuses, and other factors. This diversity extends to environmental features, with varying temperatures, landscapes, and natural phenomena observed across different regions of the country. Additionally, India hosts a significant ethnic group of indigenous peoples, with approximately 80 million individuals constituting nearly a quarter of the global indigenous population⁶⁹. They are present in various natural habitats across India, constituting less than 7% of the country's population. In contrast, indigenous communities rely heavily on their surrounding environment and generally avoid encroachment or exploitation⁷⁰. As conquerors arrived in India, indigenous communities were displaced, some forced into exile while others retreated into isolation to avoid subjugation. This led to a stark divide between indigenous and non-indigenous lifestyles, with the latter experiencing rapid transformation and integration into Indian society, while the former remained relatively stagnant. Centuries of separation have entrenched this divide, resulting in vastly different contemporary lives for indigenous and nonindigenous peoples. Although preserving indigenous traditions may seem commendable, it's crucial to understand and address the factors contributing to their lack of development. Recognizing the importance of indigenous peoples in biodiversity conservation, it's imperative to enact laws that study their lives, educate them about their constitutional rights, and provide opportunities for integration into mainstream society. This chapter will explore existing laws pertaining to indigenous peoples in India, the country's international obligations to protect their interests, and advocate for affirmative legal changes to promote their advancement, particularly in the context of tourism.

CONSTITUTIONAL RIGHTS

The Indian Constitution includes numerous clauses intended to safeguard the rights of indigenous communities, commonly known as Scheduled Tribes or Adivasis. These provisions

⁶⁹ Asia Indigenous People's Pact, "India and the Rights of Indigenous People" (Aippnet.org, 31 August 2010) <https://aippnet.org/india-and-the-rights-of-indigenous-peoples-2/>.

⁷⁰ <https://www.downtoearth.org.in/coverage/governance/indigenous-people-in-india-and-the-web-ofindifference55223>

are vital for protecting their land, culture, and socio-economic welfare amidst diverse challenges, including those arising from tourism development. Below are key articles and their interpretation regarding indigenous rights protection, and their impact on advancing the lives of indigenous people in the context of tourism development.

Promotion of educational and economic interests of Scheduled Tribes⁷¹.

This article emphasizes the importance of the state in advancing the educational and economic well-being of Scheduled Tribes, acknowledging their historically marginalized status. It is suggested that in tourism development, special attention should be given to uplifting indigenous communities by offering employment, entrepreneurial prospects, and avenues for skill enhancement. Furthermore, educational efforts should concentrate on empowering indigenous youth to actively engage in the tourism industry.

Administration of Scheduled Areas and Scheduled Tribes⁷²: This article grants the President the authority to designate specific regions predominantly inhabited by tribal communities as Scheduled Areas. The Fifth Schedule outlines unique regulations for governing these areas. Within Scheduled Areas, any initiatives for tourism development must comply with the guidelines outlined in the Fifth Schedule. These guidelines encompass safeguarding tribal land rights, preventing the unauthorized transfer of tribal land, and engaging in consultations with tribal councils prior to initiating any development endeavors. Tourism endeavors within these regions must prioritize the socio-economic advancement of indigenous populations while also respecting their cultural and environmental considerations.

Grants in aid to States for Scheduled Tribes and Scheduled Areas:

This article allows the Indian government to provide financial assistance to states for the welfare of Scheduled Tribes and the development of Scheduled Areas⁷³. Funds designated through Article 275(1) are intended to be employed towards bolstering ⁷⁴ infrastructure, healthcare, education, and various welfare initiatives aimed at aiding indigenous communities residing in areas affected by tourism. This assistance is vital for enhancing the socioeconomic well-being of indigenous populations and addressing any negative ramifications tourism may

⁷¹ Art. 46, the Constitution of India, 26 January 1950.

⁷² Art. 244, fifth schedule, The Constitution of India, 26 January 1950.

⁷³ Art. 275(1), The Constitution of India

⁷⁴ To support or improve something or make it stronger

have on their means of livelihood.

Right to freedom of movement, residence, and profession⁷⁵:

While Article 19 of the Indian constitution guarantees freedoms such as the right to reside anywhere in the country and pursue any profession, Clause 6 permits reasonable restrictions in the interest of the public. It also ensures that cultural and linguistic minorities have the freedom to preserve their language and culture without state interference. India has also pledged to uphold the cultural and land rights of indigenous peoples, in line with its commitments to the International Labour Organisation since 1989⁷⁶.

Indigenous peoples should have the authority to manage their ancestral lands and resources. Any tourism ventures that infringe upon these rights must be regulated appropriately to safeguard the well-being of indigenous communities and support their long-term prosperity.

Protection of life and personal liberty: This article guarantees the right to life and personal liberty⁷⁷, indigenous communities are entitled to a dignified existence, encompassing their right to livelihood and cultural identity preservation. This entails access to natural resources and protection from exploitation. Tourism development should aim to enhance the well-being and empowerment of indigenous peoples without encroaching on these fundamental rights.

National Commission for Schedule Tribes

The Constitution of India establishes the National Commission for Scheduled Tribes⁷⁸ (NCST) To protect the rights and welfare of indigenous communities known as Scheduled Tribes (STs) in the nation, the government has set up the National Commission for Scheduled Tribes (NCST) as a constitutional entity. Its main role is to oversee the enforcement of constitutional and legal protections for STs and offer guidance to the government on matters concerning their wellbeing.

⁷⁵ Art. 19(5) The Constitution of India

⁷⁶ International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, available at <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:P12100_ILO_CODE:C169>.

⁷⁷ Art. 21, the Constitution of India

⁷⁸ Art. 338 A, the Constitution of India

Powers and Functions⁷⁹:

- The National Commission for Scheduled Tribes (NCST) is empowered to examine and oversee issues concerning the protection of Scheduled Tribes (STs) as enshrined in the Constitution or other legal frameworks.
- It holds the responsibility to investigate individual grievances regarding the infringement of rights and protections accorded to STs, suggesting appropriate actions for redressal.
- The Commission presents regular or ad hoc reports to the President of India concerning the efficacy of measures safeguarding the interests of Scheduled Tribes.

The main aim of this article is to uphold and advance the rights of indigenous communities, including their entitlements to land, resources, and cultural heritage. The National Commission for Scheduled Tribes (NCST) ensures that the government respects the rights of Scheduled Tribes (STs) in various development endeavors, such as tourism initiatives, and mitigates any negative impacts on their livelihoods and socio-cultural identity. The NCST endeavors to prevent the exploitation and marginalization of indigenous communities, protecting them from displacement, forced assimilation, and discriminatory treatment. Regarding tourism, the Commission safeguards the rights of STs from exploitation by ensuring fair compensation, equal participation, and sustainable development practices in tourism projects affecting their territories. It also facilitates the involvement and consultation of indigenous communities in decision-making processes concerning policies and projects that affect them, particularly in tourism development. By ensuring the representation of STs' voices and perspectives, the Commission promotes inclusive and sustainable tourism practices.

CULTURAL RIGHTS OF TRIBAL PEOPLE

Members belonging to scheduled tribes possess unique and dynamic cultures, languages, attire, and traditions that have been transmitted through generations within their communities. It is the responsibility of the state to safeguard these cultures with the same diligence as it would for nontraditional cultures. Preserving these cultural identities is crucial for upholding the

⁷⁹ <https://ncst.nic.in/content/functions-commission>

diversity of Indian society and for the exploration of ancient cultures and wisdom.

The Constitution ensures the right of protection for any group of Indian citizens who have their own distinct language, script, or culture⁸⁰. This protection is also afforded to scheduled tribes in India. Tribal languages such as Bodo⁸¹, Dogri⁸² and Santhali⁸³ ⁸⁴ have also been included in the list of Scheduled languages in Schedule Eight of the Constitution of India⁸⁵. The Eighth Schedule of the Indian Constitution acknowledges the official languages of India, highlighting the nation's rich cultural and linguistic diversity. Various national and regional bodies have been established to uphold and celebrate different aspects of these diverse cultures. Despite constitutional provisions aimed at safeguarding India's myriad cultures, tribal communities often find themselves disproportionately impacted. While the government hasn't actively enforced any particular language or culture on tribal groups, it also hasn't implemented proactive measures to preserve their cultural heritage. According to Halavath, tribal communities struggle to preserve their language and culture due to their limited access to human, organizational, and financial resources⁸⁶. The persistent underdevelopment of India's scheduled tribes, even seven decades postindependence, underscores the imperative for a thorough reassessment of their cultural rights. Such a review is crucial for safeguarding their age-old tribal customs and traditions.

NATIONAL TRIBAL POLICY⁸⁷

Since gaining independence, the government has implemented numerous laws to recognize and safeguard the rights of indigenous communities. These legal frameworks, starting from constitutional provisions, have aimed to tackle a range of challenges faced by tribes across the nation. Additionally, national and regional institutions, like the National Commission for Scheduled Tribes, have been established to oversee the well-being of indigenous populations⁸⁸. State Commissions for Scheduled Tribes are official entities established by the government to

⁸⁰ Art. 29, the Constitution of India (India), 26 January 1950,

⁸¹ <https://www.britannica.com/topic/Bodo-language>

⁸² <https://www.britannica.com/topic/Dogri-language>

⁸³ <https://indiantribalheritage.org/?p=21807#:~:text=Heritage%20in%20India,Santali%20and%20related%20tribal%20languages%20of%20the%20Chotanagpur,Mundari%2C%20Ho%20%26%20Birjija%20%E2%80%93%2>

⁸⁴ Jharkhand&text=b.,different%20from%20Kurukh%20and%20Kharia.

⁸⁵ https://www.mha.gov.in/sites/default/files/EighthSchedule_19052017.pdf

⁸⁶ Krishna Halavath, "Human Rights and Realities of Tribals' Lives in India: A Perfect Storm" (2014) 19(4) IOSR Journal of Humanities and Social Science (IOSR-JHSS) 45.

⁸⁷ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=148227>

⁸⁸ <https://ncst.nic.in/>

oversee the development and well-being of indigenous communities, monitoring their advancement in society.

Despite the government's efforts to acknowledge the rights of indigenous peoples, ongoing atrocities and discrimination against tribal communities by both societal elements and certain governmental bodies have cast a shadow over this commendable progress. To address these persistent issues effectively, the Indian government has introduced the National Tribal Policy, nearly six decades post-independence, aiming to establish a lasting solution⁸⁹. In 2006, the Ministry of Tribal Affairs drafted the creation of a policy aimed at tackling various challenges faced by scheduled tribes. These included enhancing the human development index among tribal communities, upgrading infrastructure in tribal regions, securing greater autonomy over natural resources in these areas, and promoting fairer distribution of wealth and opportunities among indigenous groups⁹⁰. The primary objective of the policy is to ensure that individuals belonging to tribal communities have equal opportunities for development and improvement in their socioeconomic status, comparable to the general population of the country.

The National Tribal Policy, initially just a draft, didn't enact substantial legal alterations and was eventually substituted by a newer policy crafted in 2017. This latest draft specifically targets the scheduled tribes of India. Its preamble outlines its aims, including the intent to address the needs and concerns of these tribes comprehensively.

“tries to strike balance between preservation of tribal identity, culture and values, protecting tribes from being swamped by mainstream lifestyles, while increasing and ensuring their access to mainstream education, health care and income generation so that the quality of their life is improved”⁹¹

The draft policy for tribal communities aims to prioritize the unique needs of primitive tribal groups. One key objective is to enhance the social perception of these groups, moving away from labeling them as 'primitive'. Efforts will focus on integrating them into mainstream society alongside other indigenous groups not deemed primitive. Additionally, the proposal

⁸⁹ National Tribal Policy Policy.ed to Address Developmental Issues of Tribals, July 21, 2006, Press Information Bureau, Government of India, available at <http://www.pib.nic.in/newsite/erelease.aspx?Relid=18976>

⁹⁰ https://prsindia.org/files/bills_acts/bills_parliament/2005/bill53_2007010353_Draft_National_Policy_on_Tribals.pdf

⁹¹ Ministry of Tribal Affairs, National Tribal Policy (Draft), 2017, p. 1, available at <http://www.panchayatgyan.gov.in/documents/30336/0/tribalpolicy.pdf/aa158969-8ae3-49af-9dc17fa608814974>.

includes provisions for healthcare access and education to improve their lifespan and literacy rates.

Moreover, agricultural training will be provided to these communities, as they traditionally rely on hunting and gathering for sustenance.⁹² The policy will focus on improving the quality of life for individuals belonging to indigenous tribal communities.

ENVIRONMENTAL PROTECTION ACT 1986

The Environment Protection Act (EPA) of 1986⁹³ a pivotal law in India is dedicated to safeguarding and enhancing the environment and the welfare of its citizens. Although the Environmental Protection Act (EPA) doesn't explicitly prioritize indigenous rights, its clauses hold considerable weight for indigenous communities, particularly concerning tourism development. Here are key aspects of the EPA and their implications for safeguarding indigenous rights amidst tourism growth.

FOREST RIGHT ACT 2006

The Forest Rights Act (FRA) of 2006⁹⁴ is a crucial piece of legislation in India aimed at recognizing and protecting the forest rights of indigenous and forest-dwelling communities. The Act seeks to rectify historical injustices by granting legal recognition to the rights of these communities over forest land and resources. Below are the important provisions of the Forest Rights Act along with their interpretation in the context of tourism and its impacts on indigenous communities:

Recognition of Forest Rights: The FRA recognizes the rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers over forest land and resources⁹⁵. Indigenous communities, including Scheduled Tribes, are entitled to hold and use forest land and resources traditionally enjoyed by them. This provision aims to safeguard the customary rights of indigenous communities to access and manage forests, which are often integral to their

⁹² Ministry of Tribal Affairs, National Tribal Policy (Draft), 2017, p. 14.

⁹³ The objective of the Environment Protection Act (EPA) is to protect and improve the environment and environmental conditions. It also implements the decisions made at the UN Conference on Human Environment that was held in Stockholm in the year 1972.

⁹⁴ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2 of 2007, 2007 (India).

⁹⁵ Section 4 of FRA 2006

livelihoods and cultural practices.

Rights to Land and Resources: The Act grants eligible individuals and communities the right to hold and live in the forest land under their occupation⁹⁶. Interpretation: Indigenous communities have the legal right to reside in and use forest land for habitation, cultivation, grazing, and other customary purposes. This provision protects the land tenure rights of indigenous communities, ensuring their continued connection to and dependence on forest resources for sustenance and cultural practices.

Recognition of Community Forest Rights: The FRA provides for the recognition of community forest rights, empowering communities to protect, manage, and conserve community forest resources⁹⁷. Indigenous communities have the authority to govern and manage community forests collectively, thereby promoting sustainable forest management practices. This provision acknowledges the traditional ecological knowledge and conservation practices of indigenous communities, contributing to biodiversity conservation and carbon sequestration efforts.

Rights of Ownership, Access, and Control⁹⁸: The Act recognizes the rights of forest dwellers to protect, regenerate, and conserve community forest resources. Indigenous communities have the authority to prevent unauthorized exploitation of forest resources, including by external actors such as commercial logging companies and tourism operators. This provision empowers communities to participate in decision-making processes concerning the use and conservation of forest resources, thereby enhancing their resilience to external pressures, including those arising from tourism activities.

Role of Gram Sabhas⁹⁹ : The act requires the creation of Gram Sabhas, which are village assemblies meant to democratically manage community forest resources and settle claims regarding forest rights. These assemblies play a vital role in empowering indigenous communities to assert their rights over forests, especially concerning tourism projects. They enable community involvement and agreement in decisions regarding tourism initiatives within forested regions, ensuring indigenous concerns are respected and addressed.

⁹⁶ Section 3 of FRA 2006

⁹⁷ Section 3(e) of FRA 2006

⁹⁸ Section 3(c) of FRA 2006

⁹⁹ Section 5 & 6 of FRA 2006

In conclusion, the Forest Rights Act of 2006 plays a pivotal role in safeguarding the rights of indigenous communities in India, including their rights over forest land and resources. However, the impacts of tourism on indigenous communities remain a significant concern, necessitating the need for effective implementation of the FRA provisions and the adoption of sustainable tourism practices that respect the rights, livelihoods, and cultural integrity of indigenous communities.

EIA FOR TOURISM PROJECTS

Environmental Impact Assessment (EIA)¹⁰⁰ mandates that any new project or activity likely to have a significant adverse impact on the environment must undergo an environmental impact assessment. In the context of tourism development, projects such as construction of resorts, hotels, or infrastructure in areas inhabited by indigenous communities would require an EIA. This provision ensures that the potential environmental and socioeconomic impacts on indigenous communities are considered before approving tourism projects.

The Environmental Impact Assessment Notification, 2006¹⁰¹

In contrast to the prior version, the Notification of 1991, which mandated environmental impact assessments for tourism developments, the Notification completely disregarded environmental impact assessments. All tourist projects costing in excess of Rs. 5 crore that are located between 200 and 500 metres of a High Tide Line or at elevations higher than 1000 metres must have environmental approval from the Central Government¹⁰². Why the tourist sector is excluded from the EIA processes while it is clearly established that it contributes significantly to India's GDP is a significant question.

The Wild Life (Protection) Act of 1972¹⁰³(WPA): It authorizes wildlife photography, scientific study, and tourism in protected areas. However, since this regulation was created, both the kind and quantity of tourists in protected regions have changed significantly.

¹⁰⁰ Impact Assessment Notification of January 27, 1994, § 2(III)(a); Manual of Environmental Impact Assessment (EIA) produced by Ministry of Environment and Forest, January 2001.

¹⁰¹ https://environmentclearance.nic.in/report/EIA_Notifications.aspx

¹⁰² James Stella & Uday Shankar Nayana, "Does Tourism need to be within the EIA?"

¹⁰³ The Wild Life (Protection) Act, 1972 , <https://tribal.nic.in/downloads/FRA/Concerned%20Laws%20and%20Policies/Wildlife%20Protection%20Act,%201972.pdf>

Therefore, it is imperative to revise the Act or at the very least establish standards that control tourists and tourism operations within and surrounding protected areas.

1991 Notification of Coastal Regulation Zones: Legislation plays a vital role in overseeing human activities along coastal areas. Over time, the Notification has undergone twenty revisions, resulting in a reduction of protective measures and making some ineffective.

Action Plan for National Biodiversity Strategies

The program aims to tackle the broader impact of tourism on important ecosystems and emphasizes principles for balancing tourism growth with biodiversity conservation efforts. India's Ministry of Environment and Forests (MOEF&CC) declined to approve the NBSAP, arguing that it lacked scientific validity¹⁰⁴. The NBSAP's development was one of the most democratic procedures in Indian history.

CONCLUSION

In conclusion, the legal frameworks governing tourism and related laws, along with the protection of the rights of indigenous communities, both at the international and national levels, play a crucial role in ensuring sustainable development, cultural preservation, and social justice. Internationally, conventions and declarations such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), International Labour Organization (ILO) Convention 169, UNWTO and UNESCO World Heritage Convention provide guiding principles for responsible tourism practices and the protection of indigenous rights. These instruments emphasize the importance of recognizing indigenous land rights, promoting cultural preservation, and ensuring meaningful participation of indigenous communities in decision-making processes related to tourism development.

In India, constitutional provisions, statutory laws such as the Forest Rights Act (FRA) 2006, Environment Protection Act 1986, and Wildlife Protection Act 1972, as well as the establishment of institutions like the National Commission for Scheduled Tribes (NCST), are aimed at safeguarding the rights and interests of indigenous communities adding on the various tourism related policies and five year plans which specifies the growth of legal framework of

¹⁰⁴ National Biodiversity Action Plan (NBAP) Addendum 2014 to NBAP 2008, available at <https://www.cbd.int/doc/world/in/in-nbsap-v3-en.pdf>.

tourism in india is inadequate. These legal mechanisms seek to address historical injustices, protect indigenous lands and resources, and promote inclusive and sustainable tourism practices that benefit indigenous communities while respecting their cultural heritage and socio-economic wellbeing. However, challenges persist in the effective implementation and enforcement of these legal frameworks, including inadequate consultation processes, weak enforcement mechanisms, and conflicts between development objectives and indigenous rights. Addressing these challenges requires concerted efforts from governments, civil society organizations, and the private sector to ensure that tourism development is conducted in a manner that respects the rights, dignity, and aspirations of indigenous communities.

In this context, promoting community-based tourism initiatives, enhancing awareness and capacity-building programs, strengthening legal enforcement mechanisms, and fostering meaningful dialogue and collaboration between stakeholders are essential steps towards achieving a more equitable, inclusive, and sustainable tourism industry that benefits both indigenous communities and society at large. By upholding the principles of justice, equity, and respect for cultural diversity, legal frameworks can serve as powerful tools for fostering harmonious and mutually beneficial relationships between tourism development and indigenous communities, ultimately contributing to the conservation of natural and cultural heritage for future generations.

RECOMMENDATIONS

- Strengthen legal safeguards for indigenous communities affected by tourism, ensuring their rights to land, culture, and self-determination are upheld.
- Develop comprehensive national legislation aligning with international standards to protect indigenous rights within the tourism sector in India.
- Enhance judicial oversight to address tourism-related conflicts affecting indigenous communities, promoting fair adjudication and equitable outcomes.
- Foster collaboration between indigenous representatives and tourism stakeholders to establish culturally sensitive tourism practices and sustainable development initiatives.
- Advocate for the inclusion of indigenous perspectives in policymaking and

planning processes for tourism development, ensuring their voices are heard and respected.

- Facilitate capacity-building initiatives for indigenous communities to engage in sustainable tourism enterprises, empowering them economically while preserving their cultural heritage.
- Establish monitoring and evaluation frameworks to assess the socio-economic and cultural impacts of tourism on indigenous communities, informing evidence-based policy interventions and best practices.

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